

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	<b>Docket No. 09-0592</b>
	)	
<b>Adoption of 83 Ill. Adm. Code 412 and</b>	)	
<b>Amendment of 83 Ill. Adm. Code 453.</b>	)	

**FIRST NOTICE PERIOD COMMENTS OF  
INTERSTATE GAS SUPPLY, INC. AND  
INTERSTATE GAS SUPPLY OF ILLINOIS, INC.**

Interstate Gas Supply, Inc. (“IGS, Inc.”) and Interstate Gas Supply of Illinois, Inc. (“IGS Illinois”) (collectively, “IGS Energy”), by and through their attorneys, and pursuant to Section 5-40 of the Illinois Administrative Procedure Act (5 ILCS 100/5-40), hereby respectfully submit their Comments on the July 17, 2011 First Notice Order issued by the Illinois Commerce Commission (“Commission”) in the above-referenced proceeding pursuant to its publication in the August 12, 2011, Illinois Register. In its Comments, IGS Energy addresses the following issues:

- 1) **Early Termination Fees.** Caps on early termination fees in the initial stages of residential market development can have a positive impact by providing a more comfortable shopping environment for residential consumers. However, artificially low termination caps fail to appropriately reflect the risk taken in providing consumers longer term offers. Such caps should be designed in a manner that limits the negative effect that they will have on the development of the most attractive market offers. A reasonable balance is to allow for early termination fees in an amount that recognizes the longer term offer risk, permitting \$50 early termination fees for periods of 12 months or shorter, with a higher limit for contracts that exceed 12 months, with an upper limit of \$150 for multi-year contracts. It should also be

clarified that such early termination fee caps only apply to residential customers, not commercial or industrial customers.

- 2) **Name and Logo Use.** Rules pertaining to the use of a name or logo similar to an incumbent utility should focus on the use of proper disclosures with respect to the relationship between the ARES and the utility, and should be applicable regardless of affiliation to the utility or its parent/related company.
- 3) **Door-to-Door Solicitation.** Door-to-Door solicitations should have parameters regarding time of day for such solicitations, although should take into consideration the times people are home to receive such solicitations, with seasonal modifications instead of a single 10:00 a.m. to 6:00 p.m. timeframe.

## **I. Introduction**

IGS, Inc. is a licensed Alternative Retail Electric Supplier and an active participant in the Illinois competitive electricity market. IGS Illinois is a licensed Alternative Gas Supplier and an active participant in the Illinois competitive natural gas market. In addition to Illinois, IGS Energy (through IGS, Inc. or its affiliates) is an active participant in competitive markets in eight other states and in over twenty public utility service areas. As such, IGS Energy has a strong interest in the continued fair and consistent development of an efficient and robust competitive energy marketplace in Illinois.

## **II. Proposed Section 412.120(k) – Door-to-Door Solicitation Hours**

Door-to-door sales is a viable sales channel, and for many consumers is an efficient way to become educated about the market and available offers. IGS Energy understands that it is appropriate to have limitations regarding the time of day companies may solicit consumers via door-to-door means. However, restricting door-to-door activity from 10:00 a.m. to 6:00 p.m. as

currently indicated in proposed Rules 412.120(k) would inappropriately restrict access to many consumers, since the adults in many working families likely are not home during these hours.

In its recent Pennsylvania proceeding related to door-to-door marketing, the Pennsylvania Commission proposed to establish seasonal limitations, such that door-to-door sales activity would take place between the hours of 9:00 a.m. and 8:00 p.m. between April 1 and September 30, and between the hours of 9:00 a.m. and 7:00 p.m. from October 1 until March 31. (*See* Pennsylvania Public Utility Commission, Docket No. L-2010-2208332, February 10, 2011, Proposed Rulemaking Order, Annex A, Section 111.9.) This timeframe recognizes both the need for consumer protection during darker hours and allowing marketers to present their offers to consumers while most adult family members are likely to be home and able to receive the offers.

Allowing for seasonally adjusted hours similar to what the Pennsylvania Commission recently endorsed would strike a reasonable balance between customer privacy and respect for later evening hours and reasonably permitting marketers to provide their offers to consumers. Accordingly, IGS Energy respectfully recommends the following revisions to Proposed Section 412.120(k) (suggested revisions are shown in strikethrough and bold):

“Persons conducting door-to-door sales may do so ~~only~~ between the hours of ~~9~~10 am to ~~7~~6 pm **during the period of October 1 through March 31, and between the hours of 9 am and 8 pm during the period of April 1 through September 30,** unless the jurisdiction where the door-to-door sales take place has rules for door-to-door solicitation that are more restrictive, in which case, the [sic] **latter shall apply.**”

### **III. Proposed Section 412.190 - Affiliate Name and Logo Use**

The First Notice Order Proposed Section 412.190 appears to broadly preclude the use of names and logos in certain circumstances. That rule fails to implement appropriate disclosure obligations that can appropriately protect consumers from confusion without inappropriately limiting the use of a business name by an ARES. IGS Energy is concerned that Proposed Section 412.190 continues to be unclear regarding the entities to which it applies, and that the current proposed rule might preclude the use of certain name or logo information altogether, even with appropriate disclosures.

As a general proposition, if a utility name is used by an ARES -- affiliated or otherwise -- that ARES should make proper disclosures with respect to its relationship with any Illinois electric utility or any other public utility (e.g., a gas utility) within the customer's service area. Legal affiliation with the electric or gas utility really is not relevant to the need for disclosures, nor should it be a line of demarcation whether a similar name could be used. In other words, the focus of the regulations should be on proper disclosure regardless of the ARES's type of affiliation, as opposed to precluding the use altogether.

IGS Energy respectfully requests that the Commission refine the Order by deleting proposed Section 412.190 or modifying proposed Section 412.190 to clarify that the rules do not absolutely preclude the use of an ARES name similar to that of a utility within the customer's service area, and further clarifying that regardless of affiliation if a similar name is used proper disclosures need to be provided to inform consumers of the nature of the relationship, as well as the entity's legal name providing the services.

If the Commission chooses to retain proposed Section 412.190, IGS Energy respectfully recommends the following revisions (suggested revisions are shown in strikethrough and bold):

**Except after full disclosure of any relationship between an Alternative Retail Electric Supplier (ARES) and an Illinois electric or gas utility operating in the same service area, an ARES** ~~a RES~~ shall not be permitted to market power and energy service to residential customers using a similar name (where any part of the ~~A~~RES name contains any part of the utility name) or logo to that of an existing electric utility affiliated in Illinois. **This section does not apply to an electric utility serving or seeking to serve retail customers, including residential customers, pursuant to Section 16-116 of the Public Utilities Act.**

#### **IV. Proposed Section 412.230 – Early Termination of Sales Contract**

Caps on early termination fees should be designed in a manner that limits the negative impact that such caps have on the development of the long-term contracts, historically the most attractive market offers to residential consumers. The regulations also should clarify that such caps apply only to residential consumers, where some limits are appropriate, and not in the commercial context, where such limits could preclude more sophisticated customers from obtaining the types of contracts that they desire.

##### **A. Caps on Early Termination Fees**

Proposed Section 412.230 would institute a \$50 cap on early termination fees on all RES contracts, regardless of the term length. This restriction is mirrored in Proposed Section 412.110(f). This one-size-fits-all approach is inappropriate, and would stifle the development of longer-term contracts.

Caps on early termination fees in the initial stages of residential market development can have a positive impact by providing a more comfortable shopping environment for residential consumers. However, the caps should vary based upon the underlying product being offered.

Products with longer terms usually present very different value propositions to consumers than variable and shorter term contracts; oftentimes rather than looking to provide consumer savings, the longer-term contracts are designed to provide rate or cost stability. Placing restrictions on the market that would virtually preclude longer term offers seems particularly inappropriate now. With natural gas and electric commodity prices currently at what are relatively low rates based on recent history, it seems that it may be a reasonably good time for consumers to at least consider longer terms offers. A universally-applicable termination fee cap of \$50 can significantly reduce if not even eliminate the ability of RESs to offer contracts in excess of 12 months to consumers.

Early termination fees allow RESs to have some means of mitigating against losses when customers unilaterally terminate a contract without cause before the natural expiration of that contract. In order for a RES to ensure that it can meet the requirement of the agreement, the RES takes positions to ensure the efficient and competitive pricing can be provided. Customers would tend to remain in their agreement if the market prices climb, and the RES in those higher markets would be expected to hold those prices for the duration of the contract, regardless of how high the market prices rises. Conversely, customers might have an inclination at some point to move to new agreements if the market prices falls sufficiently from the time the contract was entered with the RES. In those instances, a customer has the ability to move to new agreements, but the RES is left with the unfulfilled positions and the loss associated with those positions. As such, a more measured approach should be implemented that recognizes that while some early termination cap is appropriate, such a cap approach should be sufficiently flexibly so as not to preclude longer term agreements in the market.

Accordingly, a tiered early termination fees structure may be more useful. IGS Energy respectfully submits that for contracts less than 12 months, a \$50 cancellation fee is reasonable; with contracts for longer durations a limit of \$150 would be appropriate. If an additional tier is desirable, then IGS Energy would suggest that contracts less than 12 months have a cap of \$50 on early termination fees; contracts from 12 months to 23 months have a cap of \$100 on early termination fees; and contracts for all other lengths beyond 23 months have a cap of \$150 on early terminations fees. Although slightly more complex than a single flat cap, this approach recognizes the benefits of different durations of contracts and strikes an appropriate balance between creation of proper protections for consumers and allowing for development of a vibrant market.

**B. Application of Early Termination Fee Caps to Commercial Contracts**

While appropriate early termination fee caps can play a reasonable role in the development of residential markets, they are not appropriate for commercial and industrial customers. In commercial markets, where more direct and individual negotiations related to agreements is more the standard, a generally applicable rule on early termination fee caps is unnecessary and inappropriate. Commercial customers regularly negotiate contracts -- generic limitations on cancellation fees create significant limitations on commercial customers getting the services that they desire. Any limitations regarding cancellation fees should be focused on the residential customer class only, expressly excluding commercial and industrial customers from those limitations.

IGS Energy offers the following revisions to Proposed Section 412.230 consistent with the foregoing recommendations (proposed changes in bold):

Any contract between an RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee, provided that any early termination fee or penalty **for residential customers shall not exceed \$50 for contracts with an initial term of less than 12 months, \$100 for contracts with an initial term of 13 to 23 months, and \$150 for contract with an initial term exceeding 23 months.**

**V. Conclusion**

For the reasons discussed herein, IGS Energy respectfully requests that the Commission modify the First Notice Order and proposed regulations in accordance with the arguments and suggested language revisions set forth herein.

Respectfully submitted,

**Interstate Gas Supply of Illinois, Inc. and  
Interstate Gas Supply, Inc.**

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